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No. OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

Hyde Park Medical Laboratory, Inc., an Illinois Corporation,

Petitioner,

v.

Court of Claims of the State of Illinois, The Illinois Department of Public Aid, and Philip Bradley in the official capacity as Director of the Department of Public Aid,

Respondents.

On Petition for Writ of Certiorari to the Appellate Court of Illinois, First District, Fifth Division

APPENDIX

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January 1995

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FIFTH DIVISION
March 31, 1994

1-91-3886

HYDE PARK MEDICAL LABORATORY, INC an Illinois Corporation,	)	APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY.
Plaintiff-Appellant,	)	
v.	)	
COURT OF CLAIMS OF THE STATE OF ILLINOIS, THE ILLINOIS DEPARTMENT OF PUBLIC AID, and PHILIP BRADLEY, in his official capacity as Director of the Illinois Department of Public Aid,	)	
Defendants-Appellees.	)	THE HONORABLE ARTHUR L. DUNNE, JUDGE PRESIDING.

JUSTICE COUSINS, JR. delivered the opinion of the court:

Plaintiff, Hyde Park Medical Laboratory, appeals from the circuit court's order dismissing its complaint against the court of claims, the Department of Public Aid, and Philip Bradley in his official capacity as director of the Department of Public Aid for lack of jurisdiction. The following issues are raised on appeal: (1) whether the circuit court properly held that it was without jurisdiction to entertain an action for declaratory judgment; (2) whether the circuit court abused its discretion in refusing to issue a writ of mandamus; and (3) whether the circuit court abused its discretion in refusing to grant a writ of certiorari.

We affirm.

BACKGROUND

Plaintiff rendered services to the Department of Public Aid (Department) from December 31, 1969 through May 31, 1971. In July of 1971, the Department notified plaintiff that its unpaid invoices were being held pending investigation. Thereafter, the Department refused to pay the invoices. In 1972, plaintiff instituted an action in the court of claims against the State of Illinois seeking $340,681.

The action was delayed due to removal (and reinstatement) of plaintiff's original counsel, actions brought in the District Court for the Northern District of Illinois, recusal of Court of Claims Commissioners on allegations of bias, failure of defendants to produce documents, and plaintiff's motions for general

continuance status. The case was on general continuance status from March of 1973 until October of 1975, from January of 1977 until June of 1978 and from May of 1979 until January of 1983.

The court of claims conducted a series of hearings in 1976 before a commissioner. No further hearings were held until 1987. On May 11, 1987, the commissioner was instructed to submit his report and on August 22, 1988, the court of claims issued a decision.

In its decision, the court of claims noted that the transcripts of proceedings revealed little evidence, and much argument, bickering and allegations of wrongdoing between the parties. Although the State asserted during the hearings that the claim should have been barred because

of fraud on the part of plaintiff, the court of claims found this allegation to be wholly unsupported by the record. Instead, the court of claims found that the record demonstrated by a preponderance of the evidence that plaintiff was entitled to $340,681.

Plaintiff subsequently filed a motion for rehearing, reconsideration and modification seeking an award of pre-award interest and attorneys fees. The court of claims denied the motion.

On March 28, 1989, plaintiff filed a second complaint in the court of claims which alleged a separate and distinct claim for the interest due and owing pursuant to statute, citing the Prompt Payment Act (Ill. Rev. Stat. ch. 127, par 132.401, et seq. now codified as amended at 30 ILCS

540/1 et seq. (West 1992)), as well as Article I, sections 2, 12, and 15 of the United States Constitution and the Fourteenth Amendment. On December 7, 1990, the court of claims issued an opinion dismissing plaintiff's second complaint. The court of claims held that the Prompt Payment Act did not apply to plaintiff's claims for the following reasons:

> "Ill. Rev. Stat. 1987, ch 127, par. 132.403-1, relied upon by Claimant provides:
>
> 'In any instance where a State official or agency is late in payment of a vendor's bill or invoice properly approved in accordance with this Act *** the State official or agency shall pay the interest penalty ***.' (Emphasis added.)

While Claimant asserts that 'evidence has and will show that all invoices were approved for payment' any such 'approval' of invoices for services rendered in 1969-1971 had been rescinded prior to the filing of the original claim in 1972. We note that the enactment of the Prompt Payment Act was in 1975, effective July 1, 1976. Nothing in the legislative debates, supplied by Claimant indicates an intent to provide interest on invoices that were not 'approved' at the time of the passage of the legislation. Accordingly, even if the Claimant's invoices were subject to the legislation, it would not be entitled to interest since they were not

approved."

Plaintiff filed a motion for rehearing, reconsideration, modification, grant of summary judgment and entry of award prayed for in the complaint, requesting inter alia, an evidentiary hearing with respect to certain findings upon which the court of claims based its December 7, 1990 opinion. The court of claims denied this motion.

On March 13, 1991, plaintiff filed a complaint in the circuit court against the court of claims, the Illinois Department of Public Aid, and Philip Bradley, as Director of the Illinois Department of Public Aid, seeking a declaratory judgment, and the issuance of a writ of mandamus and/or certiorari to compel defendants to fulfill their statutory and/or constitutional

duties to plaintiff under the Prompt Payment Act, as well as the Illinois and United States Constitutions. On May 6, 1991, defendants moved to dismiss, asserting that the action was barred by sovereign immunity; that the court of claims, the proper forum, had denied pre-award interest which decision was res judicata to the instant claim; and that plaintiff had no clear right to compel a decision in plaintiff's favor.

On September 9, 1991, after reviewing the pleadings and hearing argument, the circuit court granted defendants' motion to dismiss. The court held that plaintiff had been granted a full hearing in the court of claims and that the circuit court had no power or authority to review a decision of the court of claims regarding the award of

interest on a judgment in favor of plaintiff. Plaintiff filed a motion for reconsideration which the circuit court denied. This appeal followed.

OPINION

Plaintiff sought to have the circuit court issue a declaratory judgment stating that under the Prompt Payment Act, plaintiff was entitled to an award of interest on the judgment it obtained in the court of claims. However, the court of claims had already decided this issue against plaintiff. Moreover, the court of claims was the only forum which had jurisdiction to decide such a claim. The State Lawsuit Immunity Act provides in relevant part:

"§ 1. Except as provided in the 'Illinois Public Labor Relations Act'

> *** or except as provided in 'AN ACT to create the Court of Claims', *** the State of Illinois shall not be made a defendant or party in any court. (745 ILCS 5/1 (West 1992) formerly, Ill. Rev. Stat. 1991, ch. 127, par. 801.)

The Court of Claims Act provides in pertinent part:

> "§ 8. The court shall have exclusive jurisdiction to hear and determine the following matters:
>
> (a) All claims against the state founded upon any law of the State of Illinois *** other than claims arising under the Workers' Compensation Act or

> the Workers' Occupational Diseases Act, or claims for expenses in civil litigation." 705 ILCS 505/7 (West 1992) formerly, Ill. Rev. Stat. 1991, ch. 37, par. 439.8.

The law is clear. "All claims against the state founded upon any law of the State of Illinois" are within the exclusive jurisdiction of the court of claims. (705 ILCS 505/7 (West 1992); see Ellis v. Board of Governors (1984), 102 Ill. 2d 387.) Plaintiff is seeking a monetary award from the Department of Public Aid under the Prompt Payment Act. The Department of Public Aid is an arm of the State and the Prompt Payment Act is a law of the State of Illinois. Clearly, the circuit court had no jurisdiction to make an independent

determination of the parties' rights under the Prompt Payment Act.

Plaintiff next contends that its claim fits within an exception to the doctrine of sovereign immunity. Plaintiff points out that sovereign immunity affords no protection when it is alleged that the State's agents acted in violation of statutory or constitutional law or in excess of their authority. (See Healy v. Vaupel (1990), 133 Ill. 2d 295, 308.) Plaintiff sought to have the circuit court issue a writ of mandamus to compel members of the court of claims and the director of the Department of Public Aid to "abide by their statutory duties." Plaintiff suggests that it is the court of claims' duty to order the director to pay plaintiff interest and it is the director's duty to

pay the interest.

Mandamus is an extraordinary remedy which is only appropriate where the party seeking the writ demonstrates a clear legal right to the requested relief. (See League of Women Voters of Peoria v. County of Peoria (1987), 121 Ill. 2d 236, 243; Winston Plaza Currency Exchange, Inc. v. The Department of Financial Institutions (1991), 211 Ill. App. 3d 1062, 1068.) Mandamus is used to direct a public official or body to perform a ministerial duty, one which does not involve the exercise of judgment or discretion. (Winston, 211 Ill. App. 3d at 1068.) It cannot be used to direct a public official or body to reach a particular decision or to exercise its discretion in a particular manner, ever if the judgment or discretion

has been erroneously exercised. City of Highwood v. Obenberger (1992), 238 Ill. App. 3d 1066; Winston, 211 Ill. App. 3d at 1068.

In the instant case, plaintiff has failed to show a clear right to relief. In its brief, plaintiff contends that it "is entitled to interest and/or interest penalty pursuant to and in accordance with one or more of the following statutory provisions:

(1) Ill. Rev. Stat. 1988, ch. 127, pars. 132.401 through 132.403-1; (2) Ill. Rev. Stat. 1976, ch. 127, pars. 132.401 through 132.4031; and (3) Ill. Rev. Stat. 1977, ch. 23, par. 12-4.25(F)." Each of these statutes was enacted prior to the accrual of plaintiff's cause of action and the filing of its claim; plaintiff cites no

authority rendering these statutes retroactive. It was within the province of the court of claims to determine whether the above statutes were applicable to plaintiff's claim. The court of claims determined that even if plaintiff's invoices were subject to the legislation, plaintiff would not be entitled to interest since the invoices were not properly approved at the time of the passage of the legislation. As we discussed above, the circuit court was without authority to make an independent determination of the parties' rights. Because plaintiff failed to demonstrate a clear right to relief, the circuit court did not abuse its discretion by refusing to issue a writ of mandamus to either the members of the court of claims or the director of the Department of Public

Aid.

Finally, plaintiff sought to have the circuit court issue a writ of certiorari to review the court of claims' decision and/or order the court of claims to hold an additional evidentiary hearing. A common law writ of certiorari may be available to review the actions of an inferior tribunal when no other mode of appeal or review is provided. (Rossetti Contracting Co. v. Court of Claims (1985), 109 Ill. 2d 72, 79.) However, there is no absolute right to review by certiorari; issuance of a writ of certiorari lies within the sound discretion of the court. (Stratton v. Wenona Community Unit District (1990), 133 Ill. 2d 413, 428.) Plaintiff relies on Rossetti, 109 Ill. 2d 72, to support his position.

In Rossetti, a decision expressly limited to its facts, our supreme court held that a writ of certiorari was the appropriate means to review a decision by the court of claims. (Rossetti, 109 Ill. 2d at 79.) Rossetti was a subcontractor to a general contractor who had entered into an agreement with the Illinois Department of Transportation. A dispute arose, and the general contractor brought suit in the court of claims for money due under the contract, including money owed to the subcontractor. As an affirmative defense, the Department of Transportation asserted that the general contractor had engaged in fraud against the State. The subcontractor then sought to intervene in the suit, arguing that there was no evidence of fraud on his part. The court of claims denied

the subcontractor's petition without stating reasons. Subsequently, the court of claims granted summary judgment in favor of the Department of Transportation and dismissed the general contractor's claim in its in entirety.

The subcontractor then sought relief in the circuit court by filing a petition for writ of certiorari. The circuit court stated that a manifest injustice had been worked upon the subcontractor, and that he should have a right to appear in a forum and present his claim against the State of Illinois. However, the circuit court concluded that it was without jurisdiction over the matter and denied the claim on that basis. Rossetti, 109 Ill. 2d at 76.

The supreme court concluded that a writ of certiorari was the appropriate

means to review the court of claims' decision. The supreme court observed that the subcontractor was not presently seeking money damages against the State, but only the right to be heard on his claim. The supreme court noted that it had the authority and the responsibility, as the final arbiter of the Constitution, to determine whether the court of claims had acted in a manner which unconstitutionally deprived a party of its right to due process. The supreme court then concluded that the subcontractor had been denied his due process rights and remanded the case to the court of claims. Rossetti, 109 Ill. 2d at 78-79.

In holding that certiorari was appropriate in Rossetti, the supreme court expressly limited its decision to the

narrow facts before it:

> "In deciding that certiorari was appropriate under the rare set of circumstances in the instant case, we do not now hold that certiorari would be available to review the correctness of any decision of the court of claims based on the merits of an appeal." Rossetti, 109 Ill. 2d at 80.

Unlike the subcontractor in Rossetti, plaintiff was not deprived of the opportunity to be heard. We decline to extend the scope of review permitted in Rossetti to the merits of decisions from the court of claims. In enacting the Court of Claims Act, the legislature created an exception to the doctrine of sovereign immunity by allowing parties to bring

monetary claims against the State in the court of claims. (See 705 ILCS 505/1 et seq. (West 1992).) It is within the legislature's prerogative to determine the condition upon which suits against the State may be brought. The legislature has determined that the court of claims has exclusive subject matter jurisdiction over monetary claims against the State. Accordingly, the circuit court was without authority to review the merits of the court of claims decision.

Plaintiff further alleges that it was denied due process when the court of claims rejected its request for an evidentiary hearing regarding the court of claims' finding that plaintiff's invoices were not properly approved. Plaintiff asserts that under Rossetti, it is entitled to an

additional evidentiary hearing. Plaintiff's reliance on Rossetti is misplaced.

In Rossetti, the plaintiff was never afforded any opportunity to be heard; Rossetti was never permitted to become a party to the suit which deprived him of his rights under a contract with the State. Here, plaintiff was afforded a hearing on the issue of whether interest should be awarded on plaintiff's judgment. The court of claims heard arguments and allowed the parties to file supplemental briefs. The court then determined that,

> "While Claimant asserts that 'evidence has and will show that all invoices were approved for payment,' any such 'approval' of invoices for services rendered in 1969-1971 had

been rescinded prior to the filing of the original claim in 1972. We note that the enactment of the Prompt Payment Act was in 1975, effective July 1, 1976. Nothing in the legislative debates, supplied by Claimant indicates an intent to provide interest on invoices that were not 'approved' at the time of the passage of the legislation. Accordingly, even if the Claimant's invoices were subject to the legislation, it would not be entitled to interest since they were not approved."

Plaintiff contends that it should have been granted an additional hearing specifically on the issue of whether its

invoices were "approved." Plaintiff argues that it should have had the opportunity to prove that the invoices were approved. We find no due process violation in the court of claims refusal to grant an additional hearing. It is clear from the court of claims' opinion that it considered the very issue on which plaintiff seeks to be heard; the court determined from the evidence before it that approval was lacking and no additional evidence from plaintiff could prove otherwise. Accordingly, the circuit court did not abuse its discretion in failing to order the court of claims to provide an additional hearing.

For the foregoing reasons, the judgment of the circuit court is affirmed.

Affirmed.

MURRAY, P.J., and McNULTY, J., concur.

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

HYDE PARK MEDICAL LABORATORY, INC., an Illinois Corporation,	)	
Plaintiff-Appellant,	)	
v.	)	No. 1-91-3886
COURT OF CLAIMS OF THE STATE OF ILLINOIS, THE ILLINOIS DEPARTMENT OF PUBLIC AID, and PHILIP BRADLEY in the official capacity as Director of the Department of Public Aid.	)	
Defendants-Appellees.	)	

ORDER

Plaintiff-Appellant's Petition for Rehearing is denied.

Entered June 14, 1994

ILLINOIS SUPREME COURT

JULEANN HORNYAK, CLERK

77554 **SUPREME COURT BUILDING**

SPRINGFIELD, ILL. 62706

(217) 782-2035

October 6, 1994

Mr. Lawrence Jay Weiner
Scariano, Kula, Ellch & Himes, Chtd.
180 North Stetson, S#3100
Chicago, IL 60601-6714

No. 77554 - Hyde Park Medical Laboratory, Inc., etc., petitioner, v. Court of Claims of the State of Illinois et al., etc., respondents. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for appeal as a matter of right or

leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 28, 1994.

IN THE
SUPREME COURT OF ILLINOIS

HYDE PARK MEDICAL LABORATORY, INC., an Illinois Corporation,	)	
Plaintiff-Appellant,	)	
v.	)	No. 77554
COURT OF CLAIMS OF THE STATE OF ILLINOIS, THE ILLINOIS DEPARTMENT OF PUBLIC AID, and PHILIP BRADLEY in his official capacity as Director of the Department of Public Aid,	)	
Defendants-Appellees.	)	

ORDER

THIS CAUSE COMING ON TO BE HEARD UPON the Petitioner's Motion of the Petitioner and Plaintiff-Appellant Hyde Park Medical Laboratory, Inc. for Leave to File Motion for Reconsideration, and the Court being

fully advised in the premises.

IT IS HEREBY ORDERED that the Motion of the Petitioner and Plaintiff-Appellant Hyde Park Medical Laboratory, Inc. for Leave to File its Motion for Reconsideration be and is denied.

Filed: November 18, 1994

IN THE CIRCUIT COURT OF

COOK COUNTY, ILLINOIS

Hyde Park Medical Lab. Inc.	)	
Plaintiff,	)	
v.	)	No. 91 CH 2302
Court of Claims of the State of Illinois, The Illinois Dept. of Public Aid and Philip Bradley,	)	
Defendants.	)	Judge Dunne

ORDER

This matter coming before the Court for hearing on Defendants' Motion to Dismiss, the matter being fully briefed, and the Court being duly advised in the premises,

It is hereby Ordered that Defendants' Motion is granted. This cause is dismissed for want of jurisdiction for the reasons stated in open court. The Court finds that

there is no just reason for delaying enforcement or appeal of this matter.

Entered September 9, 1991

IN THE CIRCUIT COURT OF

COOK COUNTY, ILLINOIS

Hyde Park Medical Lab. Inc.	)	
Plaintiff,	)	
v.	)	No. 91 CH 2302
Court of Claims of the State of Illinois, The Illinois Dept. of Public Aid, et al.,	)	
Defendants.	)	Judge Dunne

ORDER

This matter coming before the Court on Plaintiff's Motion for Reconsideration, all parties appearing by counsel and the Court being duly advised in the premises;

It is Hereby Ordered that Plaintiff's Motion for Reconsideration is denied. There is no just reason for delay (sic) enforcement or appeal of this Order.

Entered November 12, 1991

COURT OF CLAIMS
STATE OF ILLINOIS

HYDE PARK MEDICAL LABORATORY, an Illinois Corporation	)	
Claimant,	)	
vs.	)	No. 6779
STATE OF ILLINOIS,	)	
Respondent.	)	

OPINION

Lawrence Jay Weiner, Chicago, for Claimant,

Neil F. Hartigan, Attorney General, Springfield, by Robert Sklamberg, Assistant Attorney General, Chicago, for Respondent.

RAUCCI, JUDGE, DELIVERED THE OPINION OF THE COURT:

This case is brought by Claimant seeking to recover $340,681.00 for medical laboratory services rendered to the

Department of Public Aid from December 31, 1969 through May 31, 1971. The Respondent urges that no sums are due.

To understand this case, and the interminable delays in its disposition, the following discussion of the facts is necessary.

In July of 1971, the Department of Public Aid notified Claimant that its unpaid invoices were being held pending investigation. Thereafter, the Department refused to pay them and this action was instituted for $307,960.00 By amended Complaint, the amount sought is now $340,681.00.

This action has been delayed in proceeding because of the Claimant's removal (and reinstatement) of his original counsel, actions brought in the District Court for the Northern District of

Illinois, recusal of our Commissioners on allegations of Claimant of bias, failure of Respondent to produce documents, and Claimant's motions for general continuance status pursuant to our Rules. This case was on general continuance status from March of 1973 until October of 1975, from January of 1977 until June of 1978 and from May of 1979 until January of 1983.

A series of hearings was conducted in 1976 before one of our Commissioners. It should be noted that none of the present Judges of this Court were such at that time. No further hearings were held until 1987. On May 11, 1987, we entered an Order, on motion of claimant, barring the Respondent from offering further evidence and instructed our Commissioner (not the one who conducted the 1976 hearings) to submit his report. He has done so, and we

have extensively examined the record in our possession, and herewith issue or Opinion.

The transcripts of proceedings reveal little evidence, and much argument, bickering and allegations or wrongdoing between the Claimant, his attorney and the Assistant Attorney General (now deceased) who participated in the 1976 hearings.

It was asserted by Respondent during the hearings that the claim should be barred because of fraud on the part of the Claimant. Our examination of the record fails to show a scintilla of evidence that supports that allegation.

The record in support of Claimant's claim consists of the verified pleadings, testimony of its sole shareholder that the services were rendered to patients eligible for medical assistance, documents and the offer of "boxes" of invoices and records

admittedly in the possession of the Respondent and, since the prior hearings, "lost" either by the Office of the Attorney General or the Department of Public Aid more than ten years ago. Additionally, the Claimant has submitted the statement of his counsel, under oath, that "The Bill of Particulars (previously filed) constituted a true and accurate summary of the aforesaid records and was conformed and verified prior to submission to the Commissioner." See Supplemental Motion for Immediate Granting of An Award, page 2, filed June 23, 1988.

Respondent does not deny that it received records prior to the 1976 hearings, and simply maintains they are "lost". In fact, Respondent has, in correspondence filed with us by Claimant, acknowledged that it did receive invoices

and billings for approximately $165,000.00.

The Bill of Particulars, filed December 10, 11986, is some two inches thick, and describes by date, patient and amount of charge the more voluminous records and invoices submitted ten (10) years earlier to the Respondent and lost by Respondent. The Bill of Particulars specifies some 6,376 charges.

Based on the entire record, and we note that Respondent has not refuted Claimant's evidence, we find that the Claimant has established, by a preponderance of the evidence, that it is entitled to $340,681.00

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Claimant is awarded $340,681.00 in full and complete satisfaction of this claim.

Filed: August 22, 1988

IN THE COURT OF CLAIMS - STATE OF ILLINOIS

HYDE PARK MEDICAL LABORATORY,	)	
Claimant,	)	
v.	)	No. 6779
STATE OF ILLINOIS,	)	
Respondent,	)	

ORDER

This cause coming on to be heard on claimant's Motion for Rehearing, Reconsideration, and Modification, and respondent's Reply thereto; due notice having been given the parties hereto, and the Court being fully advised in the premises:

We note first that claimant's motion is a request for an award of pre-award interest and attorneys fees in this case.

This Court has consistently held that interest is not recoverable against the State in the absence of a statute specifically and clearly naming the State of Illinois for inclusion in that statute. I & D Pharmacy, Inc. v. State, 37 C.C.R. 37, 41-43. Note that I & D Pharmacy involved the same statute, Ill.Rev.Stat., ch. 110, par. 2-1303, that claimant herein cites as the basis for its claim to interest. It should also be noted that this statute applies to interest on judgments, or "post-judgment" interest, and not pre-judgment interest, as is sought herein. See also, Moline Heating & Construction Company v. State 35 C.C.R. 150, which deal specifically with pre-judgment interest (claim denied). Id. at 160.

Similarly, this Court has long held

that the State of Illinois is not liable for payment of attorneys fees in the absence of a statute specifically and clearly subjecting it to such liability. Cayman Associates, Ltd. v. State, 33 C.C.R. 301. Claimant relies on Ill.Rev.Stat., ch. 110, par. 2-611, which subjects the State to its provisions, for this claim for attorneys fees. However, this statute is inapposite as it concerns the application of sanctions for the certification of pleadings in bad faith. That subject is wholly irrelevant to the case at hand, and it is inappropriate for claimant to seek the relief requested under that statute.

For the foregoing reasons, we hold that claimant's motion for pre-judgment interest and attorneys fees should be denied.

IT IS THEREFORE ORDERED that claimant's Motion for Rehearing, Reconsideration, and Modification be, and the same is, hereby denied.

Filed: November 7, 1988

IN THE COURT OF CLAIMS FOR THE STATE OF ILLINOIS

HYDE PARK MEDICAL LABORATORY, INC., an Illinois Corporation,	)	
Claimant,	)	
vs.	)	No. 89-CC-3041
STATE OF ILLINOIS and THE ILLINOIS DEPARTMENT OF PUBLIC AID,	)	
Respondent.	)	

OPINION

R. Steven Polachek and Lawrence Jay Weiner, Chicago, for the Claimant;

Neil F. Hartigan, Attorney General, Springfield, by Robert J. Sklamberg, Assistant Attorney General, Chicago, for Respondent.

RAUCCI, JUDGE, delivered the Opinion of the Court.

Pending before the Court is the

Claimant's Motion for Summary Judgment and the Respondent and the Respondent's Motion to Dismiss.

Respondent has moved to dismiss on the grounds of res judicata. A brief discussion of the origination of this action is necessary to understand the issues.

In 1972 Claimant filed an action in this Court seeking payment for services rendered to the Department of Public Aid. Other actions ere filed in federal court, and the matter in this Court was continued generally. After disposal of the other actions, the matter was concluded in this Court on August 22, 1988 with an award to Claimant on $340,681. Claimant filed a Motion for Rehearing, Reconsideration, and Modification seeking "pre-award interest and attorneys' fees". On November 7, 1988

that motion was denied. On March 28, 1989, Claimant filed the instant action. Claimant has filed a Motion for Summary Judgment, and Respondent has filed a Motion to Dismiss. We heard oral arguments, and allowed the parties to file supplemental briefs.

Because of the length of time of contention between the parties, and the nature of the issues before us, we decline to rule on the Respondent's contention that this action is barred by res judicata. Instead, we construe the motions, memoranda and exhibits of the parties as cross-motions for Summary Judgment and proceed to rule thereon.

Ill.Rec.Stat. 1987, ch. 127, par 132.403-1, relied upon by Claimant, provides:

> In any instance where a State official or agency is late in payment of a

> vendor's bill or invoice properly approved in accordance with this Act . .. the State official or agency shall pay the interest penalty. . . (emphasis supplied).

While Claimant asserts that "the evidence has and will show that all invoices were approved for payment" any such "approval" of invoices for services rendered in 1969-1971 had been rescinded prior to the filing of the original claim in 1972. We note that the enactment of the Prompt Payment Act was in 1975, effective July 1, 1976. Nothing in the legislative debates, supplied by Claimant, indicates an intent to provide interest on invoices that were not "approved" at the time of the passage of the legislation. Accordingly, even if the Claimant's invoices ere subject to the legislation, it would not be entitled to interest since they were not approved.

Claimant has cited In re Special Education of Steven Walker, 131 Ill. 2d 300, 546 N.E. 2d 520, 1989) for the proposition that the Prompt Payment Act "constituted an example of an act which sufficiently manifested the Legislature's intent to waive sovereign immunity and required payment of interest on bills unpaid by the State". We do not find sovereign immunity to be an issue in this case. Rather, we find the issue to be whether Claimant's 1969-1971 invoices qualify for interest under the facts of this case. For the reasons set forth, we decide the issue against Claimant and for Respondent.

It is therefore ORDERED, ADJUDGED and DECREED that this claim is DISMISSED, and forever barred.

Filed: November 7, 1988

COURT OF CLAIMS
STATE OF ILLINOIS

HYDE PARK MEDICAL LABORATORY, INC. an Illinois Corporation,	)	
Claimant	)	
vs.	)	No. 89-CC-3041
STATE OF ILLINOIS,	)	
Respondent.	)	

ORDER

THIS CAUSE coming on to be heard on Claimant's Petition for Rehearing, Reconsideration, Grant of Summary Judgment and Entry of Award Prayed for in Complaint, and the Court being fully advised in the premises, it is

ORDERED that Claimant's Petition for Rehearing, Reconsideration, Grant of Summary Judgment and Entry of Award Prayed for in Complaint is hereby DENIED.

Filed: June 12, 1991

COURT OF CLAIMS
STATE OF ILLINOIS

HYDE PARK MEDICAL LABORATORY, INC. an Illinois Corporation,	)	
Claimant	)	
vs.	)	No. 89 CC 3041
STATE OF ILLINOIS, and THE DEPARTMENT OF PUBLIC AID,	)	
Respondent.	)	

ORDER

THIS CAUSE coming on to be heard on Claimant's Request for Evidentiary Hearing, the Court being fully advised in the premises.

FINDS that on June 12, 1991, we denied Claimant's Petition for Rehearing, Reconsideration, Grant of Summary Judgment and Entry of Award Prayed for in Complaint. It appears that in transmitting a copy of that Order to Claimant, the Clerk

erroneously sent a form letter indicating further review was available. No further review, or proceedings, are available. Our Order of June 12, 1991 effectively terminated all proceedings in the Court of Claims.

ORDERED, that the Claimant's Request for Evidentiary Hearing is DENIED.

Filed: September 6, 1991

PERTINENT ADDITIONAL STATUTORY PROVISIONS

PUBLIC AID CODE
Illinois revised Statutes 1977, ch. 23,
§ 12-4.25 (F)

* * *

(F) The Illinois Department may withhold payments to any vendor during the pendency of any proceeding under this Section except that if a final administrative decision has not been issued within 120 days of the initiation of such proceedings, unless delay has been caused by the vendor, payments can no longer be withheld, provided, however, that the 120 day limit may be extended if said extension is mutually agreed to by the Illinois department and the vendor. The Illinois Department shall state by rule with as much specificity as practicable the conditions under which payments will not be withheld during the pendency of any proceeding under this Section. Payment may be denied for bills submitted with service dates occurring during the pendency of a proceeding where the final administrative decision is to terminate eligibility to participate in the medical assistance program. The Illinois Department shall state by rule with as much specificity as practicable the conditions under which payments will not be denied for such bills.

Section 2-701 (declaratory Judgments) of the Code of Civil Procedure, Ill. Rev. Stats., ch. 110, par. 2-701

Section 2-701. Declaratory judgments. (a) No action or proceeding is open to objection on the ground that a merely declaratory judgment or order is sought thereby. The court may, in cases of actual controversy, make binding declarations of rights, having the force of final judgments, whether or not any consequential relief is or could be claimed, including the determination, at the instance of anyone interested in the controversy, of the construction of any statute, municipal ordinance, or other governmental regulation, or of any deed, will, contract or other written instrument, and a declaration of the rights of the parties interested. The foregoing enumeration does not exclude other cases of actual controversy. The court shall refuse to enter a declaratory judgment or order, if it appears that the judgment or order, would not terminate the controversy or some part thereof, giving rise to the proceeding. In no event shall the court entertain any action or proceeding for a declaratory judgment or order involving any political question where the defendant is a State officer whose election is provided for by the Constitution; however, nothing herein shall prevent the court from entertaining any such action or proceeding for a declaratory judgment or order if such question also involves a constitutional convention or the construction of a statute involving a constitutional convention.

(b) Declarations of rights, as herein provided for, may be obtained by means of a pleading seeking that relief alone, or as incident to or part of a complaint, counterclaim or other pleading seeking the relief as well, and if a declaration of rights is the only relief asked, the case may be set for early hearing as in the case of a motion.

(c) If further relief based upon a declaration of right becomes necessary or proper after the declaration has been made, application may be made by petition to any court having jurisdiction for an order directed to any party or parties whose rights have been determined by the declaration to show cause why the further relief should not be granted forthwith, upon reasonable notice prescribed by the court in its order.

(d) If a proceeding under this Section involves the determination of issues of fact triable by a jury, they shall be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending.

(e) Unless the parties agree by stipulation as to the allowance thereof, costs in proceedings authorized by this Section shall be allowed in accordance with rules. In the absence of rules the practice in other civil actions shall be followed if applicable and if not applicable, the costs may be taxed as to the court seems just.

Section 14-101 through 14-109 (Mandamus) of the Code of Civil Procedure, Ill. Rev. Stats., ch. 110, pars. 14-101 through 14-109, inclusive:

Section 14-101. Action commenced by plaintiff. In all proceedings commenced under Article XIV of this Act the name of the person seeking the relief afforded by this Article shall be set out as plaintiff without the use of the phrase "People ex cel." or "People on the relation of".

Section 14-102. Summons to issue. Upon the filing of a complaint for mandamus the clerk of the court shall issue a summons, in like form, as near as may be as summons in other civil cases. The summons shall be made returnable within a time designated by the plaintiff not less than 5 nor more than 30 days after the service of the summons.

Section 14-103. Defendant to plead. Every defendant who is served with summons shall answer or otherwise plead on or before the return day of the summons, unless the time for doing so is extended by the court. If the defendant defaults, judgment by default may be entered by the court. No matters not germane to the distinctive purpose of the proceeding shall be introduced by joinder, counterclaim or otherwise.

Section 14-104. Reply by plaintiff. The plaintiff may reply or otherwise plead to the answer, within 5 days after the last day allowed for the filing of the answer, unless the time for

doing so is extended and further pleadings may be had as in other civil cases.

Section 14-106. False return. If damages are recovered against the defendant, the defendant shall not be liable to be sued in any other action or proceeding for making a false return.

Section 14-107. Successor in office. The death, resignation or removal from office, by lapse of time or otherwise, of any defendant, shall not have the effect to abate the proceeding, and upon a proper showing, the officer's successor may be made a party thereto, and any relief may be directed against the successor officer.

Section 14-108. Other remedy - Amendments. The proceedings for mandamus shall not be dismissed nor the relief denied because the plaintiff may have another judicial remedy, even where such other remedy will afford proper and sufficient relief; and amendments may be allowed as in other civil cases.

Section 14-109. Seeking wrong remedy not fatal. Where relief is sought under Article XIV of this Act and the court determines, on motion directed to the pleadings, or on motion for summary judgment or upon trial, that the plaintiff has pleaded or established facts which entitle the plaintiff to relief but that the plaintiff has sought the wrong remedy, the court shall permit the pleadings to be amended, on just the reasonable terms, and the court shall grant the relief to which the plaintiff is entitled on the amended

pleadings or upon the evidence. In considering whether a proposed amendment is just and reasonable, the court shall consider the right of the defendant to assert additional defenses, to demand a trial by jury, to plead a counterclaim or third party complaint, and to order the plaintiff to take additional steps which were not required under the pleadings as previously filed.

EXCERPTS FROM THE
COMPLAINT FOR DECLARATORY JUDGMENT,
MANDAMUS AND OTHER RELIEF,
FILED IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS

* * *

5. Plaintiff is and was entitled to have received pre-award interest for the reasons set forth in Complaint attached hereto as Exhibit "C", incorporated herein by this reference, including pursuant to and in accordance with one or more of the following statutory and/or constitutional provisions: . . .

* * *

(e) In addition and/or alternatively, Claimant is entitled to interest and/or interest penalty on the sums found justly due and owing thereto as a remedy and/or damages for the denial of the equal protection of the laws and/or the taking of Claimant's property (by unlawfully depriving Claimant of sums justly due and owing thereto) without due process of law in violation of Article I, Sections 2, 12 and/or 15 of the Constitution of the State of Illinois and the Fourteenth Amendment to the Constitution of the United States.

6. The refusal, failure and/or neglect of the Defendants to award and/or pay Plaintiff the pre-award interest to which it was statutorily and/or constitutionally entitled, constituted a failure to perform the statutory and/or constitutional duties, responsibilities and/or obligations thereof.

* * *

EXCERPTS FROM THE MEMORANDUM OF LAW IN SUPPORT OF RESPONSE OBJECTIONS TO MOTION TO DISMISS, FILED IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

* * *

7. Plaintiff is and was entitled to have received pre-award interest for the reasons set forth in the Complaint filed before the Court of Claims, No. 89 CC 3040, attached hereto as Exhibit C and incorporated herein by this reference, including pursuant to and in accordance with one or more of the following statutory and/or constitutional provisions: . . .

* * *

(e) In addition and/or alternatively, Plaintiff is entitled to interest and/or penalty on the sums found justly due and owing thereto as a remedy and/or damages for the denial of the equal protection of the laws and/or the taking of Plaintiff's property (by unlawfully depriving Plaintiff of sums justly due and owing thereto) without due process of law in violation of Article I, Sections 2, 12 and/or 15 of the Constitution of the

State of Illinois and the Fourteenth Amendment to the Constitution of the United States.

8. The refusal, failure and/or neglect of the Defendants to award and/or pay Plaintiff the pre-award interest to which it was statutorily and/or constitutionally entitled, constituted a failure to perform the statutory and/or constitutional duties, responsibilities and/or obligations thereof.

* * *

EXCERPTS FROM THE SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF ITS RESPONSE AND OBJECTIONS TO MOTION TO DISMISS, FILED IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

* * *

19. The aforesaid actions of the Defendant Director of Public Aid, the failure to effect payment to Plaintiff and refusal to afford a hearing with respect to aforesaid failure and refusal, constitute an unconstitutional usurpation of the powers vested in the judicial and legislative branch of government of the State of Illinois and a denial of due process and equal protection of laws under the State of Illinois Constitution and the Constitution of the United States.

* * *

EXCERPTS FROM THE MOTION FOR RECONSIDERATION, FILED IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

* * *

If Plaintiff is not afforded an evidentiary hearing (if deemed necessary), it is respectfully submitted that Plaintiff will continue to suffer the deprivation of its rights and property without due process, in violation of its rights under the Constitutions of the State of Illinois and the United States, and be deprived of a remedy for an obvious and determined wrong.

The concern of Plaintiff is that at the hearing on Defendants' Motion to Dismiss, the Court indicated that Plaintiff had already received a "hearing," which could by inference imply that there was an evidentiary hearing as to whether Plaintiff's bills and invoices had been "approved" under the meaning of the Act. However, although Plaintiff did receive an evidentiary hearing on its claim and proved entitlement to $340,681.00 in unpaid bills and invoices, Plaintiff never was afforded a hearing <u>of any type</u> affording the opportunity to prove that the <u>purported</u> "factual;" basis for the Court of Claims' refusal to award inters, i.e., that Plaintiff's bills and invoices were not "approved," was: 1) not true; 2) not supported by the

record; and/or 3) capable of being disproved if afforded the opportunity at an evidentiary hearing. The Court of Claims refused to afford Plaintiff an evidentiary hearing. Plaintiff respectfully submits that this Court should either rule in Plaintiff's favor based upon the facts of record, or provide Plaintiff with an evidentiary hearing as a matter of fairness and equity.

* * *

EXCERPTS FROM PLAINTIFF-APPELLANT'S BRIEF, FILED IN THE APPELLATE COURT OF ILLINOIS

* * *

PLAINTIFF IS ENTITLED TO A DECLARATORY JUDGMENT, WRIT OF MANDAMUS AND/OR WRIT OF CERTIORARI

The very purpose of the prompt payments legislation from inception thereof in 1975 was to mandate the recalcitrant officers of the State of Illinois to fulfill their statutory obligation to pay justly due and owing bill. The Director of the Illinois Department of Public Aid was found (after a full evidentiary trial/hearing) to have wrongfully failed to pay the Plaintiff the sum of $340,681.00, which was the exact amount prayed for thereby. The Director of the Illinois Department of Public Aid should have promptly paid ab initio Plaintiff the sums found justly due and owing. Having violated his official and statutory responsibilities, the amounts wrongfully withheld from Plaintiff were subject to interest and/or interest penalties under the original prompt payments act adopted in 1975, to and including to the present act, effective January 1, 1988, by reason and as a result of the frustration of the General Assembly with the failure by officials of the State to promptly pay bills under the previous . . . Plaintiff is and was entitled to interest and/or interest penalty

pursuant to and in accordance with one or more of the following statutory and/or constitutional provisions:

* * *

4. In Addition and/or alternatively, Plaintiff is entitled to interest and/or interest penalty on the sums found justly due and owing thereto as a remedy and/or damages for . . . taking of Plaintiff's property (by unlawfully depriving Plaintiff of sums justly due and owing thereto) without due process of law in violation of Article I, Sections 2, 12 and/or 15 of the Constitution of the State of Illinois and the Fourteen Amendment to the Constitution of the United States.

* * *

THE CIRCUIT COURT ERRED IN DENYING PLAINTIFF AN EVIDENTIARY HEARING AND/OR REFUSING TO REMAND THE CASE TO THE COURT OF CLAIMS FOR AN EVIDENTIARY HEARING.

The purported reason proffered by the Defendant Court of Claims for denying the claimed interest was that the Plaintiff's invoices and bills were not "properly approved", stating (Opinion, December 7, 1990, Complaint Ex. "D"):

> "Ill. Rev. Stat. 1987, ch. 127, par. 132.403-1, relied upon by claimant, provides:
>
> In any instance where a State official or agency is late in

> payment of a vendor's bill or invoice properly approved in accordance with this Act... the State official or agency shall pay the interest penalty.. (emphasis supplied).

While Claimant asserts that 'the evidence has and will show that all invoices were approved for payment' any such 'approval' of invoices for services rendered in 1969-1971 had been rescinded prior to the filing of the original claim in 1972. We note that the enactment of the Prompt Payment Act was in 1975, effective July 1, 1976. Nothing in the legislative debates, supplied by Claimant, indicates an intent to provide interest on invoices that were not 'approved' at the time of the passage of the legislation. Accordingly, even if the Claimant's invoices were subject to the legislation, it would not be entitled to interest since they were not approved."

First, Plaintiff respectfully notes the manifest incongruity of the aforesaid opinion in that a wrongful refusal (much less a wrongful failure as in the instant case) to pay bills and invoices found justly due and owing will, under the Court of Claims' "reasoning", result in no interest being received by the aggrieved vendor. Apparently, it is only where the state officials (rightly or wrongly) affirmatively acknowledge the

indebtedness will interest be awarded. Accordingly, the consequence of a wrongful denial or failure to pay is the forfeiture of the statutorily mandated relief. This makes no sense.

Second, as is noted in the Court of Claims' Opinion, Plaintiff sought an evidentiary hearing whereat proof would be adduced that its bills and invoices were properly approved, and submitted evidence in support of its request (See Request for Evidentiary Hearing (R C187), and, including the affidavit of James A. Wright Documents attached thereto). Notwithstanding, the aforesaid request and evidence of approval, the Court of Claims refused to grant Plaintiff a hearing on the issue of whether the bills and invoices were "approved" within the meaning of the Act (See Order, September 6, 1991; R C201). Therefore, although Plaintiff did receive an evidentiary hearing on its claim and proved entitlement to $340,681.00 in unpaid bills and invoices, Plaintiff never was afforded a hearing of any type affording the opportunity to prove that the purported "factual" basis for the Court of Claims' refusal to award interest, i.e., that Plaintiff's bills and invoices were not "approved," was: 1) not true; 20 not supported by the record; and/or 3) capable of being disproved if afforded the opportunity at an evidentiary hearing. The Court of Claims refused to afford Plaintiff an evidentiary hearing. Plaintiff

respectfully submits that this Court should either reverse the orders of the Circuit Court and Court of Claims in Plaintiff's favor as a matter of law by reason that there will never be any "approval" of wrongfully denied bills, and/or based upon the facts of record, or reverse and remand the case with directions to the Circuit Court to provide Plaintiff with an evidentiary hearing before it or the Court of Claims as a matter of fairness and equity.

In this respect, this case in analogous to Rossetti Contracting Company, Inc. v. The Court of Claims 1985, 109 Ill.2d 72, wherein there was no hearing afforded the claimant (albeit on the substance of its claim). Therefore, assuming arguendo that the award upon the invoices and bills per se does not result in entitlement, this Court should either rule in Plaintiff's favor based upon the unrebutted evidence of approval, or grant Plaintiff a hearing whereat evidence of "approval" will be adduced, thereby establishing entitlement to interest and/or interest penalties under the Prompt Payment Act.

If Plaintiff is not afforded an evidentiary hearing (if deemed necessary), it is respectfully submitted that Plaintiff will continue to suffer the deprivation of its rights and property without due process, in violation of its rights

under the Constitutions of the State of Illinois and the United States, and be deprived of a remedy for an obvious and determined wrong.

In Rossetti, the Supreme Court held that the Court of Claims was not a court within the meaning of Article VI of the Illinois Constitution of 1970 but a fact-finding body, and therefore it was an unconstitutional deprivation or due process for the Court of Claims to interpret a section of the Court of Claims Act to be applicable to the Plaintiff without giving the Plaintiff the "opportunity to be heard." 109 Ill.2d at 78, 485 N.E. 2d 334. The Court of Claims' interpretation of Section 3-1 of the Illinois Prompt Payment Act had the effect of precluding Plaintiff from obtaining statutorily mandated interest on the wrongfully withheld payments. Since an evidentiary hearing was never had on whether Plaintiff's claims were "properly approved" by the Department of Public Aid despite Plaintiff's request for such a hearing (R. at C129-32)., the Plaintiff, as in Rossetti, was herein deprived of due process.

Accordingly, this Court should reverse and order appropriate relief to Plaintiff, or reverse and remand the case for a determination on the merits, and/or an evidentiary hearing.

* * *

EXCERPTS FROM THE PLAINTIFF-APPELLANT'S PETITION FOR REHEARING, FILED IN THE APPELLATE COURT OF ILLINOIS

* * *

II.

THIS COURT'S DECISION THAT THE COURT OF CLAIMS IS THE ONLY FORUM THAT HAS JURISDICTION TO DETERMINE THE PLAINTIFF'S RIGHT TO THE INTEREST PENALTY UNDER THE PROMPT PAYMENTS ACT IS IN CONFLICT WITH DECISIONS OF THE SUPREME COURT OF ILLINOIS AND CLEARLY ERRONEOUS.

* * *

In this case, the Court of Claims, Circuit Court, and now this Honorable Court have completely ignored: (1) the clear and unequivocal language of the statute, mandating payment of the interest penalty; (2) the clear and conclusive legislative history, evincing the frustration of the Legislature at the State's continued refusal to abide by its statutory obligations; and (3) the repeated declarations of the Supreme Court of Illinois, citing this very law as the paradigmatic example of a legislative intent to impose liability on the State. More particularly, in City of Springfield v. Allphin (1980), 82 Ill.2d at 571, the Supreme Court specifically stated that "... (W)hen

the legislature intends to impose liability on the State for interest it affirmatively declares that the burden will fall on the sovereign. (E.g., Ill. Rev. Stat., (1976), ch. 127, par. 132.403)", specifically referring to the very statute relied upon by Plaintiff herein!

Significantly and determinatively, in In Re Special Education of Steven Walker, supra, 131 Ill.2d 300, 306, the Supreme Court determinatively stated:

> Also, in City of Springfield v. Allphin, 82 Ill.2d at 578, the court noted that when the legislature intends to impose liability on the State for interest, it will affirmatively declare that the burden will fall on the sovereign. Although the court in Allphin judged that the State was not liable for the interest under a predecessor of section 2-1303 (the previous version of the statute provided for the imposition of the interest against local governmental entities but did not include the language "any other governmental entity"), this court cited section 3 of "An Act to require prompt payments by the State of Illinois for goods or services" (Ill. Rev. Stat. (1977), ch. 127, par. 132.403) as an example of an act which sufficiently manifested the legislature's intent to waive

> sovereign immunity. The cited statute provides for 1% interest on bills unpaid by the State. Section 1 of that act provides that "[t]his Act applies to any State official or agency authorized to provide for payment from State funds, by virtue of any appropriation of the General Assembly, for goods or services furnished to the State." (Ill. Rev. Stat. (1977), ch. 127, par. 132.401.)

Under such "clear and affirmative statutory language", Id. at 577, the Circuit Court and this Honorable Court were under a duty to apply the law as legislated, written, construed and interpreted by the Supreme Court of Illinois. As the Supreme Court stated in People ex rel. Harrod v. Illinois Courts Commission (1978), 69 Ill.2d 445, 472-473:

> (T)he judicial power in this State is vested solely in the courts. This power includes, among other things, the authority to judicially interpret and construe constitutional provisions and statutes when necessary. (People v. Bruner (1931), 343 Ill. 146, 157-158; Fergus v. Marks (1926), 321 Ill. 510, 414; People ex rel. Vanderburg v. Brady (1916), 275 Ill. 261, 263.) Inasmuch as the Commission is not a part of the tripartite power to interpret

statutory ambiguities or to compel judges to conform their conduct to any such interpretation. This limitation is particularly dictated inasmuch as this court is without the authority to review the correctness of the Commission's orders. To interpret the Constitution as granting the Commission such power would do violence to the intended constitutional scheme of government in this State. To grant the Commission such authority would interfere with an independent judicial system and would place trial judges in an untenable position. If, as here, the statutory interpretation of the Commission differed from that of the appellate courts, trial judges who followed, as mandated, the guidance of the courts of review, would be subject to sanction by the Commission. The "framers of the constitution sought to promote certainty and uniformity in the interpretation and declaration of the law. To that end they committee the exercise of these judicial functions to the judicial department." People v. Bruner (1931), 343 Ill. 146, 159.

Moreover, although in the context of constitutional rights, in Rossetti Contracting Co. v. Court of Claims (1985), 109 Ill. 2d 72, 78-80, the

Supreme Court reaffirmed Harrod, determinatively stating:

> In Harrod, we further reasoned that the Commission, inasmuch as it is not a part of the tripartite court system in this State, did not possess the power to interpret statutory ambiguities or to compel judges to conform their conduct to any such interpretation. We held that the function of the Commission was one of fact finding and that it should apply the facts to the determined law and not determine, construe, or interpret what the law should be. Therefore, in conclusion, we held that the Commission had exceeded its constitutional authority when, in determining whether petitioner's orders were without authority of law, it applied its own independent interpretation and statutory construction to petitioner's conduct.
>
> In the instant case, it is clear that the Court of Claims, like the Courts Commission, is not a court within the meaning of the judicial article but instead is a fact-finding body. It is also clear that this court had the authority and the responsibility, as the final arbiter of the Constitution, to determine whether the Court of Claims has acted to

unconstitutionally deprive a party of its right to due process. Rossetti is not presently seeking money damages against the State but simply a right to be heard on its alleged claim. We believe the Court of Claims, by interpreting section 14 to be applicable to Rossetti without allowing Rossetti an opportunity to be heard, has deprived Rossetti of due process of law. It is a basic tenet of constitutional law that an opportunity to be heard be granted at a meaningful time and in a meaningful manner. See Armstrong v. Manzo (1965), 380 U.S. 545, 552, 85 S.Ct. 1187, 1191, 14 L.Ed.2d 62, 66.

* * *

. . . This Honorable Court should not and cannot abdicate its responsibility and duty to cause the Court of Claims to apply the law as legislated, as written, and as (twice) interpreted by the Supreme Court of Illinois.

* * *

THE FINDING AND DECISION OF THE COURT THAT PLAINTIFF HAD RECEIVED A HEARING ON THE ISSUE OF WHETHER ITS INVOICES WERE "APPROVED" IS CLEARLY ERRONEOUS.

This Honorable Court ruled (Opinion at pp. 11-12):

Here, plaintiff was afforded a hearing on the issue of whether interest should be awarded on plaintiff's judgment. The court of claims heard arguments and allowed the parties to file supplemental briefs. The court then determined that,

> "While Claimant asserts that 'evidence has and will show that all invoices were approved for payment,' any such 'approval' of invoices for services rendered in 1969-1971 had been rescinded prior to the filing of the original claim in 1972. We note that the enactment of the Prompt Payment Act was in 1975, effective July 1, 1976. Nothing in the legislative debates, supplied by Claimant indicates an intent to provide interest on invoices that were not 'approved' at the time of the passage of the legislation. Accordingly, even if the Claimant's invoices were subject to the legislation, it would not be entitled to interest since they were not approved."

The court determined from the evidence before it that approval was lacking and no additional evidence from plaintiff could prove otherwise. Accordingly, the circuit court did not abuse its discretion in failing to

order the court of claims to provide an additional hearing.

Contrary to the aforesaid finding, Plaintiff was never afforded an evidentiary hearing by or before the Court of Claims on the issue of whether its invoices were "approved" (assuming, arguendo, that such a determination is even relevant since the failure to approve the invoices results in entitlement to the interest penalty, see Argument I, supra). The record is devoid of any evidence of such an evidentiary hearing by reason that no hearing (or even oral argument) occurred either on the motion for reconsideration of the initial award, or in the separate claim filed with respect thereto. Moreover, the determination of the Circuit Court that Plaintiff received a hearing was clearly limited to the hearing whereat Plaintiff proved 100% of its claims, without any evidence adduced in opposition, not a hearing with respect to the issue of approval.[1]

---

[1] It is noted that, contrary to the import of the Opinion (at p. 2), a substantial portion of the continuances before the Court of Claims were occasioned at the request of the State -- not the Plaintiff -- in a futile attempt to obtain evidence. It is further noted that the case was continued generally while Plaintiff pursued its legal right to

(continued...)

The record does support a factual determination that Plaintiff requested an evidentiary hearing on the issue of approval since that was the erroneous basis upon which the Court of Claims wrongfully avoided its clear and unambiguous statutory obligation to provide the interest penalty. The Plaintiff alleged that its invoices were in fact "approved", and requested an evidentiary hearing for the purpose of adducing evidence in support of its contention. This request was (twice) denied. Plaintiff received no evidentiary hearing. It was impossible for the Court of Claims, or for this Honorable Court to conclude, upon this record that "approval was lacking and no additional evidence from Plaintiff could prove otherwise". (Opinion, at p. 12). Plaintiff most respectfully submits that this conclusion is contrary to our most fundamental concepts of due process, and is directly contrary to the holding in Rossetti Contracting Co. v. Court of Claims (1985), 109 Ill. 2d 72.

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[1](...continued)
successfully obtain reinstatement to the program, which had been unjustly revoked by Defendants. Lastly, the State lost Plaintiff's evidence, not the State's evidence!

EXCERPTS FROM
PETITION FOR APPEAL AS A MATTER OF RIGHT,
OR, IN THE ALTERNATIVE,
FOR LEAVE TO APPEAL,
FILED IN THE SUPREME COURT OF ILLINOIS

* * *

POINTS RELIED UPON FOR REVERSAL

1. This was a suit to obtain a declaratory judgment, injunction, and writ of mandamus and/or certiorari to compel defendants to perform their duties and obligations as mandated by the Prompt Payment Legislation and as stated by this Court in Re Special Education of Steven Walker v. Cronin, (1989) 131 Ill.2d 300, 306 and City of Springfield v. Allphin, (1980) 82 Ill.2d, 571, 578, wherein this Court cited the aforesaid Prompt Payment Legislation as paradigmatic example of the legal imposition of liability for interest upon the State. The Circuit Court dismissed the Complaint, without affording or remanding the case for an evidentiary hearing, for lack of jurisdiction, and the Appellate Court affirmed, and Plaintiff therefore appeals, and requests leave to appeal.

2. In derogation of the clear and unequivocal mandate of the Illinois Prompt Payments Act requiring the State of Illinois to pay an interest penalty for the late payment of approved bills, or bills which the State official or agency fails to approve or disapprove within the time

limitations set forth in the Act, and the additional statutory obligation that "the Illinois Court of Claims shall, in its investigation of payments due claimants, provide for interest penalties as prescribed in this Act." (emphasis supplied). The Court of Claims refused to award Plaintiff interest upon the $340,681.00 of invoices that the Illinois Department of Public Aid had without justification and unlawfully failed to approve or disapprove, and withheld payment for services proved and found by the Court of Claims to be justly due and owing.

3. The basis for the Court of Claims' refusal was that the invoices were never "properly approved", completely ignoring and without any reference whatsoever to its statutory obligations requiring an award of an interest penalty when the State fails to approve or disapprove of bills and invoices for goods and services rendered thereto, and the fact established by the Opinion and Award in favor of Plaintiff that the invoices should have been approved and paid in the first instance.

4. Plaintiff respectfully submits that the Court of Claims' interpretations of its responsibility and the obligations of the Illinois Department of Public Aid under the Prompt Payments Act were clearly erroneous, contrary to the clear and unambiguous language of the statute,

and inconsistent with the pronouncements of this Court in City of Springfield v. Allphin, and In Re Special Education of Steven Walker.

5. The Court of Claims then denied Plaintiff's request for an evidentiary hearing to prove that the invoices were approved by the Illinois Department of Public Aid. Plaintiff respectfully submits that the aforesaid constituted a denial of due process under both the Illinois and United States Constitutions and was in conflict with this Court's decision in Rossetti Contracting Company, Inc. v. Court of Claims. See also Bio-Medical Laboratories, Inc. v. Trainer.

6. Upon review, the Court of Appeals, in an abdication of judicial responsibility, held that "the Circuit Court had no jurisdiction to make an independent determination of the parties' rights under the Prompt Payment Act", in complete conflict with this Court's opinion in People ex rel. Harrod v. Illinois Courts Commission and Rossetti Contracting Company, Inc. v. Court of Claims. Moreover, contrary to every pleading and brief submitted by the Plaintiff the Appellate Court found that the Plaintiff was seeking money damages and a review on the substantive merits of the Court of Claims decision. Both findings are incorrect. Lastly, notwithstanding the refusal to afford any evidentiary hearing on the issue of approval of the invoices, the

Appellate Court sua sponte incredibly found that Plaintiff did have a hearing on the issue of whether interest should be awarded on Plaintiff's judgment because "the Court of Claims heard arguments and allowed the parties to file supplemental briefs." Lastly, the Appellate Court found that the Court of Claims "determined from the evidence before it that approval was lacking and no additional evidence from Plaintiff would prove otherwise." In all due respect, Plaintiff respectfully submits that these findings have no support in the record.

7. Plaintiff only seeks his rights under Illinois law and the United States and Illinois constitutions, as interpreted by constitutional courts, and not a state agency and a legislative-created body that has been recalcitrant and obdurate with respect to affording claimants their statutory and constitutional rights, as this Court has found on all too many occasions. This is just one additional example of such incorrigible conduct. Such chicanery should not be countenanced by this Court.

8. The significance of the questions presented is substantial. It affects every vendor and potential vendor of goods and services to the State of Illinois, and every official and agency thereof. If this Court does

not allow review, the purpose and intent of the Prompt Payments Act, as expressed in the legislative history and by the language of the statute itself will be defeated, and without the statutory mandate and incentive to assure prompt payment, all vendors will be reluctant to deal with the State for fear of the same consequences that befell the Plaintiff -- financial ruin.

9. As importantly, the Court should allow review to reverse that portion of the decision abdicating the judicial responsibility to interpret the constitution and laws to administrative bodies and executive branch of government. While the vendors of this State do need a definitive interpretation of the legislation, it should not be by the Court of Claims, which should not be permitted to rewrite legislation by misinterpretation and misapplication. This is contrary to the separation of powers doctrine. Plaintiff respectfully submits that constitutional courts should assume jurisdiction and adjudicate these issues, and Plaintiff prays that the Court will do so in this case.

10. Lastly, the Plaintiff should not have been denied due process, particularly under a contrived conclusion by an Appellate Court. There was no evidentiary hearing afforded Plaintiff on the issue of the approval of its invoices, and to so

find is unconscionable and effects an injustice.

* * *

ARGUMENT

I.

PLAINTIFF SHOULD BE ALLOWED TO BRING THIS APPEAL AS A MATTER OF RIGHT BECAUSE A QUESTION UNDER THE CONSTITUTIONS OF THE UNITED STATES AND OF ILLINOIS ARISES FOR THE FIRST TIME IN AND AS A RESULT OF THE OPINION OF THE APPELLATE COURT.

The Appellate Court ruled (Opinion at pp. 11-12):

> Here, plaintiff was afforded a hearing on the issue of whether interest should be awarded on plaintiff's judgment. The court of claims heard arguments and allowed the parties to file supplemental briefs. The court then determined that,
>
> > "While Claimant asserts that 'evidence has and will show that all invoices were approved for payment,' any such 'approval' of invoices for services rendered in 1969-1971 had been rescinded prior to the filing of the original claim in 1972. We note that the enactment of the Prompt Payment Act was in 1975, effective July 1, 1976. Nothing in the legislative debates, supplied by Claimant indicates an

> intent to provide interest on invoices that were not 'approved' at the time of the passage of the legislation. Accordingly, even if the Claimant's invoices were subject to the legislation, it would not be entitled to interest since they were not approved."
>
> The court determined from the evidence before it that approval was lacking and no additional evidence from plaintiff could prove otherwise. Accordingly, the circuit court did not abuse its discretion in failing to order the court of claims to provide an additional hearing.

Contrary to the aforesaid finding, Plaintiff was <u>never</u> afforded an evidentiary hearing by or before the Court of Claims on the issue of whether its invoices were "approved" (even though under the statute the <u>failure</u> to approve or disapprove the invoices results in entitlement to the interest penalty). The record is devoid of <u>any</u> evidence of such an evidentiary hearing by reason that no hearing (or even oral argument) occurred either on the motion for reconsideration of the initial award, or in the separate claim filed with respect thereto. The only hearing was the hearing whereat Plaintiff proved 100% of its claims, without any opposing evidence, not a hearing with

respect to the issue of approval. [2]

The record does support a factual determination that Plaintiff requested an evidentiary hearing on the issue of approval. The Plaintiff contended that its invoices were in fact "approved", and requested an evidentiary hearing for the purpose of adducing evidence in support of its contention. This request was (twice) denied. Plaintiff received no evidentiary hearing. It was impossible for the Court of Claims, or for the Appellate Court to conclude, upon this record that "approval was lacking and no additional evidence from Plaintiff could prove otherwise". (Opinion, at p. 12). Plaintiff most respectfully submits that this conclusion is contrary to our most fundamental concepts of due process, [Armstrong v. Manzo (1965), 380 U.S. 543, 552; Boddie v. Connecticut (1971), 401 U.S. 371, 377] and is directly contrary to this

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[2] It is noted that, contrary to the import of the Opinion of the Appellate Court (at p. 2), a substantial portion of the continuances before the Court of Claims were occasioned at the request of the State -- not the Plaintiff -- in a futile attempt to obtain evidence or comply with requested discovery. It is further noted that the case was continued generally while Plaintiff pursued its legal right to successfully obtain reinstatement to the program, which had been unjustly revoked by Defendants. Lastly, the State lost Plaintiff's evidence, not the State's evidence!

Court's holding in Rossetti Contracting Co. v. Court of Claims (1985), 109 Ill. 2d 72.

In addition, the Plaintiff respectfully submits that the entire issue of approval was an artifice created by the Court of Claims to avoid the mandate of the legislature. More particularly, the Prompt Payment Act has at all times required payment of the interest penalty irrespective of whether the bills or invoices have been "approved" (1976) or "properly approved in accordance with this Act" (1988), or whenever the State official or agency "fails to approve or disapprove" that bill within the thirty (30) day period provided for approval under Section 2 of every act.

Determinatively, the record is completely devoid of any "disapproval" of the Plaintiff's invoices. The Plaintiff was only informed that its invoices were being held "pending investigation". The Department never informed Plaintiff that its invoices were disapproved, it simply failed to pay the bills. Following this failure (not a "refusal" as indicated by the Appellate Court Opinion at p. 2),

the Plaintiff filed its claim.[3]

> Second, Plaintiff respectfully notes the manifest incongruity of the aforesaid opinion in that a wrongful refusal (much less a wrongful failure as in the instant case) to pay bills and invoices found justly due and owing will, under the Court of Claims' "reasoning", result in no interest being received by the aggrieved vendor. Apparently, it is only where the state officials (rightly or wrongly) affirmatively acknowledge the indebtedness will interest be awarded. Accordingly, the consequence of a wrongful denial or failure to

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[3] In rendering its opinion, the Court of Claims deceptively stated (Opinion, December 7, 1990, App. 29):

> "Ill. Rev. Stat. 1987, ch. 127, par. 132.403-1, relied upon by claimant, provides:
>
> > In any instance where a State official or agency is late in payment of a vendor's bill or invoice properly approved in accordance with this Act...the State official or agency shall pay the interest penalty... (emphasis supplied).

The Court of Claims intentionally ignored the operative statutory language, and thus the issue.

pay is the forfeiture of the statutorily mandated relief. This makes no sense.

Third, as is noted in the Court of Claims' Opinion, Plaintiff sought an evidentiary hearing whereat proof would be adduced that its bills and invoices were properly approved. Plaintiff never was afforded a hearing of any type affording the opportunity to prove that the purported "factual" basis for the Court of Claims' refusal to award interest. The Court of Claims' interpretation of the Illinois Prompt Payment Act had the effect of precluding Plaintiff from obtaining statutorily mandated interest on the wrongfully withheld payments. Since an evidentiary hearing was never had on whether Plaintiff's claims were "properly approved" by the Department of Public Aid despite Plaintiff's request for such a hearing (R. at C129-32), the Plaintiff, as in Rossetti, was herein deprived of due process.

II.

LEAVE TO APPEAL SHOULD BE GRANTED BY REASON OF THE GENERAL IMPORTANCE OF THE QUESTIONS PRESENTED.

This case is of general importance because this Court's decision will determine whether the

express and unequivocal provisions of the Prompt Payments Act will be complied with by the Court of Claims in rendering awards for all claims for all vendors doing business with the State of Illinois, i.e., whether "The Illinois Court of Claims shall, in its investigation of payments due claimants, provide for interest penalties as prescribed in this Act." The case will also determine whether the Court of Claims can avoid this unambiguous statutory mandate by ignoring both that obligation and its other statutory obligation to award such interest if the State official or agency fails to approve or disapprove of the bill for goods or services within the time limitations set forth in the Act, or is found to have improperly failed to approve or wrongfully disapproved, or can refuse to award interest on those bills it finds that the State official or agency has not "properly" approved without affording the vendors an opportunity for an evidentiary hearing to dispute those "findings".

Since 1976, the Illinois General Assembly has attempted to provide protection and a remedy to the vendors of the State as an incentive to provide goods and services without the concern that they may not get paid for a considerable period of time. As is manifested by this case, the Court of Claims has been recalcitrant, obdurate, and incorrigible with respect to its statutory obligations.

This Court's decision will be significant to all vendors of the State of Illinois, and will influence their willingness to provide goods and services to the State of Illinois.

III.

LEAVE TO APPEAL SHOULD BE GRANTED BECAUSE OF THE NEED FOR THE EXERCISE OF THE COURT'S SUPERVISORY AUTHORITY.

This case should be reviewed because of the need for the exercise of this Court's supervisory authority in several respects.

First, contrary to this Court's decision in People ex rel. Harrod v. Illinois Courts Commission (1978), 69 Ill.2d 440, 472-473, and Rossetti Contracting Company, v. Court of Claims, supra, the Appellate Court abdicated the judicial responsibility of interpreting the laws to a legislative body. The Appellate Court's decision allowed and authorized the Court of Claims to interpret the language of the Prompt Payments Act contrary to its plain meaning, which construction was contrary to the statements of this Court as to this statute in City of Springfield v. Allphin (1980), 82 Ill.2d 571, 578 and In Re Special Education of Steven Walker, (1989), 131 Ill.2d 300, 306.

Second, the Appellate Court deprived the petitioner due process

under the United States and Illinois Constitutions, when it erroneously found that Plaintiff had been afforded an evidentiary hearing on the issue of the approval of its invoices under the Prompt Payments Act. Even a cursory perusal of the record reveals that this finding simply is not true, and this Court should not countenance such a contrivance, in deprivation of Plaintiff's right to due process as established by this Court in Rossetti Contracting Company, Inc., supra. See also, Bio-Medical Laboratories, Inc. v. Trainor (1977), 68 Ill.2d 540, 548.

Lastly, the Court should accept this case for the purpose of enforcing its own precedent with respect to injunctions, mandamus, and certiorari in actions against or involving the State of Illinois and Court of Claims. This Court should review this decision for the purpose of declaring that all State officials and agencies, including the Court of Claims, are bound to provide the protections provided in United States and Illinois Constitutions, as well as adhere to and enforce the clear and unequivocal mandates of Illinois statutory law.

* * *

V.

THIS COURT'S DECISION THAT THE COURT OF CLAIMS IS THE ONLY FORUM THAT HAS JURISDICTION TO DETERMINE THE PLAINTIFF'S RIGHT TO THE INTEREST PENALTY UNDER THE

PROMPT PAYMENTS ACT IS IN CONFLICT WITH DECISIONS OF THE SUPREME COURT OF ILLINOIS AND CLEARLY ERRONEOUS.

The Appellate Court held, inter alia (Opinion 5 at pp. 5-8):

> Plaintiff sought to have the circuit court issue a declaratory judgment stating that under the Prompt Payment Act, plaintiff was entitled to an award of interest on the judgment it obtained in the court of claims. However, the court of claims had already decided this issue against the plaintiff. Moreover, the court of claims was the only forum which had jurisdiction to decide such a claim. ...
>
> * * *
>
> Clearly, the circuit court had no jurisdiction to make an independent determination of the parties' rights under the Prompt Payment Act.
>
> It was within the province of the court of claims to determine whether the above statutes were applicable to plaintiff's claim.
>
> * * *
>
> As we discussed above, the circuit court was without authority to make an independent

determination of the parties' rights. Because plaintiff failed to demonstrate a clear right to relief, the circuit court did not abuse its discretion by refusing to issue a writ of mandamus to either the members of the court of claims or the director of the Department of Public Aid.

Plaintiff most respectfully submits that a suit for declaratory judgment, that a writ of mandamus and/or certiorari to review and correct "an erroneous construction of a statute is not a suit against the State....", even if the result is "to compel the director of the state department and other similar officials to perform their duty to pay plaintiff....". Hilger v. Myers, supra, 114 Ill. App.2d at 482, citing People ex rel. Freeman v. Department of Public Welfare, (1028) 368 Ill. 505, 507. See also, Bio-Medical Laboratories v. Trainor (1977), 68 Ill. 2d 540.

In this case, the Court of Claims, Circuit Court, and then the Appellate Court have completely ignored: (1) the clear and unequivocal language of the statute, mandating payment of the interest penalty; (2) the clear and conclusive legislative history, evincing the frustration

of the Legislature at the State's continued refusal to abide by its statutory obligations; and (3) the repeated declarations of this Court, citing this very law as the paradigmatic example of a legislative intent to impose interest liability on the State. More particularly, in City of Springfield v. Allphin (1980), 82 Ill.2d at 571, this Court specifically stated that "... (W)hen the legislature intends to impose liability on the State for interest it affirmatively declares that the burden will fall on the sovereign. (E.g., Ill. Rev. Stat., (1976), ch. 127, par. 132.403)", specifically referring to the very statute relied upon by Plaintiff herein.

Significantly and determinatively, in In Re Special Education of Steven Walker, supra, 131 Ill.2d 300, 306, the Supreme Court determinatively stated:

Also, in City of Springfield v. Allphin, 82 Ill.2d at 578, the court noted that when the legislature intends to impose liability on the State for interest, it will affirmatively declare that the burden will fall on the sovereign. Although the court in Allphin judged that the State was not liable for the

interest under a predecessor of section 2-1303 (the previous version of the statute provided for the imposition of the interest against local governmental entities but did not include the language "any other governmental entity"), this court cited section 3 of "An Act to require prompt payments by the State of Illinois for goods or services" (Ill. Rev. Stat. (1977), ch. 127, par. 132.403) as an example of an act which sufficiently manifested the legislature's intent to waive sovereign immunity. The cited statute provides for 1% interest on bills unpaid by the State. Section 1 of that act provides that "[t]his Act applies to any State official or agency authorized to provide for payment from State funds, by virtue of any appropriation of the General Assembly, for goods or services furnished to the State." (Ill. Rev. Stat. (1977), ch. 127, par. 132.401.)

Under such "clear and affirmative statutory language", Id. at 577, the Circuit Court and Appellate Court were under a duty to apply the law as legislated, written, construed and interpreted by this Court. People ex rel. Harrod v. Illinois Courts Commission, supra, 69 Ill.2d at 472-473, and Rossetti

Contracting Co. v. Court of Claims, supra, 109 Ill. 2d at 78-80. See also, Pinkstaff v. Pennsylvania Railroad Company, (1964), 31 Ill.2d 516, 521, wherein this Court "granted leave to appeal to determine the propriety of the Appellate Court's construction of the Interest Act because this case presents questions not heretofore determined by this Court." Our case is analogous because the previous declarations of this Court were dicta.

In the instant appeal, albeit on statutory and not constitutional grounds, this Plaintiff seeks an interpretation and application of the applicable law by a court of competent jurisdiction. This Court should not and cannot abdicate its responsibility and duty to cause the Court of Claims to apply the law as legislated, as written, and as (twice) interpreted by this Court. Accordingly, it is this Court and not the Court of Claims that should make the determinations with respect to entitlement and retroactivity.

* * *

EXCERPTS FROM
MOTION FOR RECONSIDERATION
PRESENTED TO THE
SUPREME COURT OF ILLINOIS

* * *

In violation of the clear and unequivocal language of the Prompt Payment Act, and contrary to the legislative intent in enacting these laws manifesting Legislature's frustration with the State's failure to pay its bills on time and to comply with this statute (and the resultant unwillingness of vendors to provide goods and services), the Appellate Court abdicated the judiciary's responsibility and duty to interpret the laws of the State of Illinois to a non-judicial, legislative tribunal, i.e., the Court of Claims.

This Court has never countenanced such abdication of judicial responsibility [e.g., see People ex rel. Harrod v. Illinois Court's Commission (1978), 69 Ill.2d 440, 472-473 and Rossetti Contracting Company v. Court of Claims (1985), 109 Ill.2d 72, 78-80], and should not do so in this case.

In this case there is a clear and unequivocal law requiring the State to pay interest when it is late in paying or fails to approve or disapprove its vendor's bills or invoices for goods and services within the time required by law, and a mandate requiring the

Court of Claims to impose an interest penalty when the State fails to fulfill its statutory obligations.

This Court has the duty and responsibility to interpret and construe that law, not the Court of Claims, and, when, as in the instant case, those laws have been violated, to provide appropriate judicial relief.

In addition, the refusal of this Court to hear this case in essence and fact vitiates and "affirms the invalidity of the Statute" without guidance to the Legislature for amendment to implement its intentions.

* * *

In this case, the Illinois Court of Claims refused to comply with the clear and unequivocal mandates of the Illinois Prompt Payment Act, Ill. Rev. Stats. (1976), ch. 127, paras. 132.401, et seq., which since 1976 have required that vendors be paid an interest penalty for late payment if the applicable Illinois State official or agency "fails to approve or disapprove that bill (for goods and services) within the period provided for approval..." under the Prompt Payment Act.

In addition, the Prompt Payment Act was amended to require that "The Illinois Court of Claims shall, in its investigation of payments due

claimants, provide for interest penalties as prescribed in this Act." (P.A. 85-348, Sec. 1, eff. Jan. 1, 1988)

Significantly, this Court has twice specifically referred to this legislation as constituting a law imposing liability for interest upon the State. In Re Special Education of Steven Walker v. Cronin (1989), 131 Ill.2d 300, 306 and City of Springfield v. Allphin (1980), 82 Ill.2d 571, 578.

In derogation of the unambiguous legislation and prophetic pronouncements of this Court, although awarding Hyde Park $340,681.00 for medical laboratory services which the Illinois Department of Public Aid wrongfully failed to pay, the Court of Claims refused to award Hyde Park the statutorily mandated interest penalty upon the specious and unfounded assertion that the invoices were not "approved" under the Act, intentionally misinterpreting and ignoring the language of the statute requiring the imposition of the interest penalty if the State official or agency "fails to approve or disapprove that bill within the period provided for approval," and the incongruity of not awarding the interest penalty for bills that were wrongfully not paid. Moreover, when Hyde Park requested an evidentiary hearing to prove that its invoices were in fact approved (although this

not necessary to be eligible for the interest penalty), the Court of Claims refused to grant such a hearing.

Hyde Park filed a Complaint for Declaratory Judgment, Mandamus and Other Relief in the Circuit Court of Cook County, Illinois, requesting a declaratory judgment and the issuance of a writ of mandamus and/or certiorari to declare and compel the Illinois Department of Public Aid and Illinois Court of Claims to comply with their statutory and constitutional duties and obligations under the Illinois Prompt Payments Act and other legislation, and the Illinois and United States Constitutions. Significantly, Hyde Park did not seek a monetary judgment in the State court proceedings.

The Circuit Court held that it did not have jurisdiction to consider the case, notwithstanding this Court's decisions in Rossetti Construction Co. v. Court of Claims (1985), 109 Ill.2d 72, 78-80, and Bio-Medical Laboratories v. Trainor (1977), 68 Ill.2d 540, 458. The Circuit Court also found with respect to Hyde Park's constitutional claims, notwithstanding the undisputed evidence to the contrary, that Hyde Park had been afforded a full hearing with respect to the issue of the approval of its unpaid invoices. The complaint was dismissed.

The Appellate Court affirmed the

dismissal, misstating that "Plaintiff is seeking a monetary award from the Department of Public Aid under the Prompt Payments Act", and holding that the Circuit Court had no jurisdiction since all monetary claims against the State of Illinois "are within the exclusive jurisdiction of the Court of Claims". The Appellate Court further found (contrary to the record) that Hyde Park was not denied due process since it "was afforded a hearing on the issue of whether interest should be awarded a plaintiff's judgment," and that the Court of Claims "determined from the evidence before it that approval was lacking and no additional evidence from plaintiff could prove otherwise". This statement is simply not true.
The Appellate Court further held:

> It was within the province of the court of claims to determine whether the above statutes were applicable to plaintiff's claim. The court of claims determined that even if plaintiff's invoices were subject to the legislation, plaintiff would not be entitled to interest since the invoices were not properly approved at the time of the passage of the legislation. As we discussed above, the circuit court was without authority to make an independent determination of the parties' rights. Because plaintiff failed to demonstrate a clear right to

relief, the circuit court did not abuse its discretion by refusing to issue a writ of mandamus to either the members of the court of claims or the director of the Department of Public Aid.

The deliberate misstatement of Hyde Park's claims and the record are not only perversions of the process of our legal system, and an injustice to Hyde Park, these misstatements constitute and effect an avoidance of the statutory and constitutional issues involved in this case, and will impact upon every invoice for goods and services provided to the State of Illinois and every proceeding before the Court of Claims to obtain the interest penalty upon sums found justly due and owing.

Resolution of these issues by this Court is not only significant to Hyde Park, but to the State and all of its present and potential vendors; it is also significant to the proper administration and rule of law, and even the doing of justice.

* * *